OMB No. 1124-0006; Expires May 31, 2020

U.S. Department of Justice

Washington, DC 20530

Exhibit A to Registration Statement Pursuant to the Foreign Agents Registration Act of 1938, as amended

INSTRUCTIONS. Furnish this exhibit for EACH foreign principal listed in an initial statement and for EACH additional foreign principal acquired subsequently. The filing of this document requires the payment of a filing fee as set forth in Rule (d)(1), 28 C.F.R. § 5.5(d)(1). Compliance is accomplished by filing an electronic Exhibit A form at https://www.fara.gov.

Privacy Act Statement. The filing of this document is required by the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide this information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: https://www.fara.gov. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: https://www.fara.gov.

Public Reporting Burden. Public reporting burden for this collection of information is estimated to average .49 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name and Address of Registrant

Quinn Emanuel Urquhart & Sullivan LLP, 865 South Figueroa Street, 10th Floor, Los Angeles, CA 90017

2. Registration No.

6705

3. Name of Foreign Principal

Bader El-Jeaan

4. Principal Address of Foreign Principal

Jaber Al-Mubarak Street
Al Kuwayt, Kuwait

5. Indicate whether your foreign principal is one of the following:

- ☐ Government of a foreign country [1]
- ☐ Foreign political party
- ☐ Foreign or domestic organization: If either, check one of the following:
  - ☐ Partnership
  - ☐ Corporation
  - ☐ Association
  - ☐ Committee
  - ☐ Voluntary group
  - ☐ Other *(specify)* _____
- ☒ Individual-State nationality Kuwait

6. If the foreign principal is a foreign government, state:

a) Branch or agency represented by the registrant

N/A

b) Name and title of official with whom registrant deals

N/A

7. If the foreign principal is a foreign political party, state:

a) Principal address

N/A

b) Name and title of official with whom registrant deals N/A

c) Principal aim N/A

1 "Government of a foreign country," as defined in Section 1(e) of the Act, includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States.

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8. If the foreign principal is not a foreign government or a foreign political party:

a) State the nature of the business or activity of this foreign principal.

Bader El-Jeaan is a senior partner with Meysan Partners, a law firm based in Kuwait, which also serves as outside counsel for, among several other clients, Agility Public Warehousing Company KSCP, a Kuwait-based company engaged, along with its subsidiaries, in the provision of global integrated logistics solutions.

b) Is this foreign principal:

Supervised by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☒
Owned by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☒
Directed by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☒
Controlled by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☒
Financed by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☒
Subsidized in part by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☒

9. Explain fully all items answered "Yes" in Item 8(b). *(If additional space is needed, a full insert page must be used.)*

N/A

10. If the foreign principal is an organization and is not owned or controlled by a foreign government, foreign political party or other foreign principal, state who owns and controls it.

N/A

EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this Exhibit A to the registration statement and that he/she is familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date of Exhibit A	Name and Title	Signature
August 2, 2019	Kristin Tahler, Partner	/s/ Kristin Tahler

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Washington, DC 20530

Exhibit B to Registration Statement Pursuant to the Foreign Agents Registration Act of 1938, as amended

INSTRUCTIONS. A registrant must furnish as an Exhibit B copies of each written agreement and the terms and conditions of each oral agreement with his foreign principal, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances by reason of which the registrant is acting as an agent of a foreign principal. Compliance is accomplished by filing an electronic Exhibit B form at https://www.fara.gov.

Privacy Act Statement. The filing of this document is required for the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide the information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: https://www.fara.gov. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: https://www.fara.gov.

Public Reporting Burden. Public reporting burden for this collection of information is estimated to average .33 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name of Registrant	2. Registration No.
Quinn Emanuel Urquhart & Sullivan LLP	6705

3. Name of Foreign Principal

Bader El-Jeaan

Check Appropriate Box:

4. ☒ The agreement between the registrant and the above-named foreign principal is a formal written contract. If this box is checked, attach a copy of the contract to this exhibit.

5. ☐ There is no formal written contract between the registrant and the foreign principal. The agreement with the above-named foreign principal has resulted from an exchange of correspondence. If this box is checked, attach a copy of all pertinent correspondence, including a copy of any initial proposal which has been adopted by reference in such correspondence.

6. ☐ The agreement or understanding between the registrant and the foreign principal is the result of neither a formal written contract nor an exchange of correspondence between the parties. If this box is checked, give a complete description below of the terms and conditions of the oral agreement or understanding, its duration, the fees and expenses, if any, to be received.

7. Describe fully the nature and method of performance of the above indicated agreement or understanding.

See attached engagement letter.

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8. Describe fully the activities the registrant engages in or proposes to engage in on behalf of the above foreign principal.

Registrant is providing legal services to Bader El-Jeaan in connection with potential litigation regarding defamation allegations. These services include providing advice on lobbying and public relations issues related to the representation, and lobbying.

9. Will the activities on behalf of the above foreign principal include political activities as defined in Section 1(o) of the Act and in the footnote below? Yes ☒ No ☐

If yes, describe all such political activities indicating, among other things, the relations, interests or policies to be influenced together with the means to be employed to achieve this purpose.

See response to Quesion 8.

EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this Exhibit B to the registration statement and that he/she is familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date of Exhibit B	Name and Title	Signature
August 2, 2019	Kristin Tahler, Partner	/s/ Kristin Tahler

Footnote: "Political activity," as defined in Section 1(o) of the Act, means any activity which the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

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WRITER'S DIRECT DIAL NO.
(213) 443-3615

WRITER'S EMAIL ADDRESS
kristintahler@quinnemanuel.com

August 1, 2019

STRICTLY CONFIDENTIAL -- ATTORNEY-CLIENT PRIVILEGED MATERIAL

Bader El-Jeaan
Meysan Partners
Jaber Al-Mubarak Street
Al Kuwayt, Kuwait

Re: Engagement Letter

Dear Sir:

We are pleased to confirm the engagement of Quinn Emanuel Urquhart & Sullivan, LLP ("QEU&S") as counsel to represent you (the "Client") to provide legal services in connection with matters arising from defamation allegations, including lobbying and advice on public relations issues related to the representation (the "Engagement"). The purpose of this letter is to confirm the terms and conditions upon which QEU&S will provide legal services in connection with the Engagement. We believe that a mutual understanding of these terms and conditions at the outset is fundamental to establishing a good working relationship. In this engagement letter, we sometimes refer to the Client as "you" or "your" and to QEU&S as "we," "our" or "us."

Client

Our engagement is on behalf of the Client, and as set forth below in connection with joint representation. In representing the Client, we will not be representing any officer, director, employee, owner, founder, member, shareholder or partner of, or any other person affiliated with the Client; or any subsidiary, parent or other affiliate of the Client. If any of these persons or entities think that they may require counsel, we would be happy to discuss with them whether we might be able to represent them as well, but any such representation would need to be covered by a separate engagement letter, and would depend on a review by us and disclosure to all concerned of the conflicts of interest that would arise in connection with any such concurrent representation, and on appropriate consents being obtained from the Client and from those seeking such additional representation.

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Scope of Engagement

You have engaged QEU&S to represent you in connection with the Engagement. Specifically, you have engaged QEU&S to provide legal services in connection with defamation allegations, including in any litigation or actions arising out of those allegations, as well as lobbying and providing advice on public relations issues related to the representation. QEU&S's services will be limited to the representation of the Client in the Engagement. Our services will not extend to other business, personal or legal affairs of the Client, or to any other aspect of the Client's activities. Our representation will conclude with the settlement of the case or entry of an award or judgment or for any of the reasons stated in the Date of Commencement and Termination of the Engagement section of this letter. Our engagement does not include the defense or prosecution of an appeal. If an appeal is appropriate and if we agree to represent the Client in the appeal, we reserve the right to enter into a separate agreement for that representation. QEU&S's receipt or use of confidential or other information from the Client or others in the course of this representation does not mean that QEU&S will render any other advice or services either to the Client or any other person or entity. Similarly, the Client will not look to or rely upon QEU&S for any investment, accounting, financial or other non-legal advice, including without limitation any advice regarding the character or credit of any person with whom the Client may be dealing.

Insurance Coverage and Claims

You understand and agree that QEU&S is not being engaged to advise regarding the existence of any insurance coverage in connection with the circumstances of the Engagement or to advise or assist in the formulation or submission of any insurance claim in connection with the Engagement. If you have not done so already, you should consider tendering this matter to your insurer(s) carriers, in order to determine whether there is insurance coverage for any of the claims asserted.

Responsible Persons – Communications Between QEU&S and the Client

We will keep you regularly and currently informed of the status of the Engagement and will consult with you whenever appropriate. Within QEU&S, I will be primarily responsible for the Engagement My office telephone number and e-mail address are (213) 443-3615 and kristintahler@quinnemanuel.com. In the event that you need to reach me and I am unavailable, please leave a voicemail message for me. It is my policy that all calls will be returned promptly and, in any event, no later than within one business day of receipt of the call; if you have not received a return call within that time, please call again. In the event of an emergency, please call my assistant, Sabrina Blank at 213-443-3331 and she will endeavor to reach me as soon as practicable thereafter.

We currently anticipate that William Burck, Stephen Hauss, Derek Shaffer, and Marc Hedrich will be working with me on the Engagement, but we may change the staffing as the need arises. I will of course seek to staff this Engagement in a manner that I think will be the most effective and efficient. I will be happy to discuss with you any staffing issues or concerns you may have at any time.

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Protection of Client Confidences – High Tech Communication Devices

We are always mindful of our central obligation to preserve the precious trust which our clients repose in us--their secrets and confidences. We take this duty very seriously and, except to the extent permitted by the applicable rules of professional conduct, we will not disclose any confidential information of yours to any other client or person. Similarly, we cannot disclose to you the confidences of any other client, even when such information relates to matters that might affect you.

In order to meet our obligation to preserve your confidences, it is important that we agree from the outset what kinds of communications technology we will employ in the course of this Engagement. Unless you specifically direct us to the contrary, for purposes of this Engagement, we agree that it is appropriate for us to use fax machines and e-mail in the course of the Engagement without any encryption or other special protections. Please notify me if you have any other requests or requirements in connection with the methods of telecommunication relating to the Engagement.

The Client's Designee to Receive Communications

We understand that you will be the person who is primarily responsible for managing the Engagement and that you will direct our activities and deal with us on any issues relating to the Engagement, including billing. Unless otherwise directed by the you, we shall fulfill our obligation to keep you informed as to the progress of the Engagement by communicating with you and by keeping you so informed.

Self-Representation

QEU&S has designated one of the firm's partners to act as the firm's General Counsel (the "General Counsel"). The General Counsel acts as a lawyer to the firm, representing QEU&S in a variety of professional and legal matters and helping attorneys at the firm to comply with their professional and ethical responsibilities to clients. Among other things, the General Counsel provides QEU&S and its attorneys with legal advice concerning professional responsibilities, potential or actual professional liabilities, and other matters. QEU&S also retains outside counsel from time to time to provide similar legal advice to the firm. It is possible that attorneys or staff working on matters for the Client may, from time to time, consult with the General Counsel or QEU&S's outside counsel on matters related to our representation of the Client. In the course of such consultation, QEU&S's attorneys and/or staff may disclose to the General Counsel or QEU&S's outside counsel privileged information concerning the Client's representation, and may receive legal advice related to QEU&S's work on the Client's matter, which legal advice QEU&S may or may not disclose to you. QEU&S views such consultations as privileged and not discoverable by anyone, not even the clients about whom such a consultation may take place. By retaining QEU&S, you acknowledge and consent to QEU&S's attorneys and staff consulting with the General Counsel or QEU&S's outside counsel as they deem necessary, both during QEU&S's representation of you and after such representation ends, and you confirm that such communications are privileged and protected against disclosure to you.

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Responsibilities of Client

In order to represent you effectively, it is important that you provide us with complete and accurate information regarding the subject matter of the Engagement, and that you keep us informed on a timely basis of all relevant developments.

Recent changes in the Federal Rules of Civil Procedure, Federal Rules of Evidence, and case law addressing electronic discovery have profoundly altered the obligations of the parties involved in litigation and their counsel. An understanding of these changes, which relate to the duties of preservation and discovery of electronically stored information ("ESI"), is an essential prerequisite to the development of a successful litigation strategy for every client. Because the duty to preserve potentially relevant information is triggered when litigation is reasonably anticipated or commenced, and because the failure to comply with these rules can have dire consequences (including sanctions ranging from monetary penalties, to entry of a default against you/your action being dismissed), we have prepared a written guideline explaining in detail these rules, their operation, and the consequences of failing to adhere to them. In the event you have not already issued a litigation hold in this matter, we request that you immediately do so, consistent with the attached guidelines.

If you have any questions about the guidelines after you read them, please call us.

No Guarantee of Result

In providing legal advice to you, I or others at QEU&S may from time to time express opinions or beliefs regarding the likely effectiveness of various courses of action or about results that may be anticipated. You understand that any such statements are opinions and beliefs only and are not promises or guaranties. We cannot and do not guarantee any particular course or outcome of the Engagement.

Joint Representation

To save legal fees and to present a unified case, we are, at your request, jointly representing you and Agility Public Warehousing Company K.S.C.P. ("Agility") in this matter. Based on the information you and Agility have given us, we are not aware of any conflict of interest that would preclude us from representing both parties.

You and Agility have the right to retain separate counsel. However, you have agreed that joint representation by QEU&S is currently the most appropriate option for you. In this regard, you acknowledge that you understand and accept the following considerations and risks associated with a joint representation. You should discuss the following considerations and risks, and any other questions or concerns you may have, with your own separate legal counsel, to make sure that you are comfortable with participating in this joint representation.

1. Confidentiality and Privilege. In a joint representation, each of the participating clients is entitled to know what any of the other client has told us, as well as what we have learned from third parties in connection with the representation. As among the jointly represented clients, there is no privileged or confidential information concerning matters within

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the scope of the representation. Each client's communications to us in the course of the joint representation will generally be privileged as to third parties. Although we are bound to protect the confidences of each Client from disclosure to third parties, such protection does not apply vis-à-vis the other jointly represented clients. In a joint representation such as this, all confidences are shared confidences because we owe a duty to keep each Client informed throughout the course of the representation. In addition, as a general matter, each jointly represented Client is obliged to protect the confidences of the other jointly represented clients from disclosure to third parties. However, if a dispute were to arise between any of the jointly represented clients, information communicated in the course of the joint representation would not be privileged or confidential in a proceeding to resolve the dispute.

2. Conflicts and Possible Withdrawal by QEU&S or Client. Joint representation requires that all participating clients take common positions as to all issues. As counsel to a group of jointly represented clients, QEU&S cannot take inconsistent positions for different members of the group. There is always the potential that the individual interests of one client may not be the same as the interests of the other clients. This could result in the need for some or all of the clients to retain new counsel.

Based on our present understanding of the facts and the issues in the Engagement, we do not now expect a divergence of interests to occur between you and Agility, but it is possible that this could change. If a divergence or conflict of interest were to arise among you and Agility, we would not be able to continue representing you or Agility unless you both consented. Depending on the nature of the divergence or conflict, it might be possible for QEU&S to continue representing you and Agility, provided that each gave consent. However, even with such consent, there could be circumstances that render it inappropriate for QEU&S to continue representing you or Agility.

If, due to a divergence or conflict of interest, it were necessary for one of the clients ("Client A") to be separately represented, the other ("Client B") could continue to be represented by QEU&S if Client A consented. Similarly, Client A could continue to be represented by QEU&S if Client B consented. In either case, the consent would have to include: (a) the former client's agreement that all information provided by the former client to QEU&S prior to its withdrawal from the representation of the former client may be used in the representation of the continuing client(s); and (b) each former client's agreement that it/he will not seek to disqualify QEU&S from continuing to represent the continuing client(s).

There is also the possibility that a client may choose to withdraw from the joint representation under circumstances where there is not a divergence or conflict of interest that necessitates separate representation of the withdrawing client. This should not interfere with our ability to continue to represent the remaining client(s). Accordingly, you understand and agree that in the event you withdraw from the joint representation under such circumstances, you hereby: (a) consent to our continuing representation of Agility; (b) agree that all information provided to QEU&S prior to the Client's withdrawal from the joint representation may be used in the representation of Agility; and (c) agree that you will not seek to disqualify QEU&S from continuing to represent the remaining Client(s).

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Your signature below constitutes your agreement that we have made disclosure to the you that, notwithstanding your consent, it is possible that we might be required to withdraw or disqualify from representing you by reason of our representation of another client and, further, that the you may incur delay, prejudice or additional cost associated with acquainting new counsel with the Engagement.

Future Conflicts of Interest

Our firm has many lawyers and several offices. We may currently or in the future represent one or more other clients in matters involving you and we may represent the parties that are adverse to you in this matter in other unrelated matters. We are undertaking this Engagement on condition that the you give your express consent and agreement that we may represent other clients, including the parties adverse to you in this matter, in the future in other matters in which we do not represent you, even if the interests of the other clients are adverse to you (including the appearance on behalf of another client adverse to the Client in an unrelated negotiation, litigation or arbitration), provided that the other matter is not substantially related to our representation of you and that in the course of representing you we have not obtained confidential information from your material to the representation of the other clients.

To the extent insurance is at issue in relation to the Engagement, we disclose that QEU&S has previously represented or is currently representing, various insurance companies, such as American International Group, Allstate Insurance Company, Liberty Mutual Insurance, Prudential Insurance Company of America, State Farm Insurance Company, The Travelers Companies, and others.

The above conflict waiver also waives possible conflicts based on future facts and circumstances that cannot be known at this time.

The countersignature to this letter on behalf of the Client also acknowledges that we have made disclosure to the Client of the above facts and that you agree to the conflict waiver set forth herein.

Billing

Our fees are based on the amount of time we spend on this Engagement. Each QEU&S attorney, legal assistant and other timekeeper assigned to this Engagement will have an hourly billing rate. These billing rates, which are set based upon seniority and expertise, are subject to adjustment annually and we will notify you of these changes thirty days in advance of their going into effect. In addition, our associate rates are based on years out of law school, so annually on September 1, each associate's rate moves up to the next higher class rate on our rate schedule; for example, on September 1, 2018, a class of 2017 graduate's rate will move up from a first-year associate rate to a second-year associate rate, and so on. These "class graduation" adjustments are not rate increases, and the Client acknowledges and agrees to these associate class adjustments by signing this letter. The billing rates of the attorneys whom we anticipate assigning to this Engagement currently range from $1550 for a senior partner to $860 for a sixth year associate. If one of our professionals performs multiple tasks for the Client during the course of a day, our

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statement will describe those tasks in a continuous narrative form accompanied by a single time entry for all tasks, a practice known as "block billing." The Client agrees that we may block bill.

Estimates

The Client understands that it is impossible to determine in advance the amount of fees and costs needed to complete any given matter. From time to time during the course of our Engagement we may provide the Client with estimates of costs and fees or projected budgets for our work going forward. Ordinarily, we do not provide these projections unless the Client specifically requests us to do so. When we do provide them, we will make a good faith effort to estimate what the future cost will be. However, in no case can such projections be guarantees regarding what the actual cost will be. The cost of litigation may change dramatically based on factors we do not control, including actions taken by our adversary, rulings by the court, or other developments in the litigation. In all instances when we provide such projections, they should be viewed as guidance only. The fees and costs which the Client will be liable for will be based on our time charges as set forth in this agreement, and not on any such projections.

Ancillary Costs

We will charge separately for certain ancillary services we provide, such as facsimile charges, secretarial and paralegal overtime and word processing. We pass along out-of-pocket costs and charges that we incur on our clients' behalf. These typically include messenger charges, deposition videography and transcript charges and administrative charges. Other charges are based on market, not cost, including service of process, document reproduction ($0.24/page), color document reproduction ($1.00/page), binders, tabs, tab creation, manila folders, redwelds, binding, punching, black and white scanning ($0.24/page), color scanning ($1.00/page), black and white oversized scanning ($0.40-$1.50/page), color oversized scanning ($2.25-$12.50/page), black and white blowbacks ($0.15/page), color blowbacks ($1.00/page), slipsheets ($0.03/page), native file printing ($0.18/page), TIFF generation ($0.02/page), OCR ($0.03/page), Viewpoint search and culling $50-$150/GB), EDD ($325-625/GB), image endorsement ($0.02/page), media creation and duplication ($15-$400), document coding ($0.28-$1.50/document), hosting ($25/GB) and litigation support consulting at hourly rates of $175 to $365 per hour, depending on the work performed. Additionally, we charge for computerized legal research (Westlaw or Lexis fees, without any applicable discount), travel costs, meal charges and parking charges (when we are working exclusively on your matter), filing fees, telephone toll charges, fees for experts and other consultants retained on your behalf, and similar charges. Our charges may also include cellular or air telephone charges that are not related to the representation, but are necessarily incurred while we are traveling on a client's case. These charges will be at cost. The costs listed are the current rates but may be subject to future adjustment. You agree that the ancillary costs described in this paragraph are costs to be paid in addition to our hourly billings, are not "overhead," and are payable separate and apart from our hourly billings in the event of any dispute.

In some cases, particularly if the amount is large, we may forward an invoice from an outside vendor or service directly to the Client for payment, which will also be due and payable upon

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receipt. Failure to pay such invoice upon request will be grounds for us to withdraw from our representation.

In the event you have supplied us with billing guidelines that are inconsistent with the terms of this Engagement Letter, you agree that the terms of this Engagement Letter shall apply unless a copy of the your billing guidelines are attached to this Engagement Letter countersigned on behalf of QEU&S, in which event your billing guidelines shall control.

We will submit bills on a monthly basis. All bills shall be paid promptly. The obligation to pay our bills is solely yours and is not contingent upon any judgment or settlement; any right you may have for reimbursement, indemnification, insurance or the like; or your receipt of any other form of payment you may expect to receive from some other party. We reserve the right at our sole discretion to charge interest of 6% per month on invoices that are 90 days or more past due. Additionally, QEU&S reserves the right to void any discounts on rates, ancillary costs or otherwise, if invoices are not timely paid. If you have any question regarding, or wish to challenge any bill, please notify us promptly of any such question or challenge, and shall in any event pay any portion of such bill that is not subject to question or challenge.

Award of Costs and Fees

A court may sometimes order a payment of costs or attorneys' fees by one party to the other. If any fees or costs are paid to us, they will be credited against any amounts Agility owes us, but Agility will be obligated for any unpaid portion of our statements as they become due. Payment of our statements may not be deferred pending a ruling on an application for attorneys' fees, costs or sanctions or pending the receipt of such an award. Any fee or cost award received from another party will be credited to Agility's account, unless it results in a credit balance. If it does, we will refund the balance to Agility. If a court awards fees or costs against Agility and in favor of an opposing party, Agility will be responsible for payment of that amount separately from any amounts due to us.

Termination

Above all, our relationship with you must be based on trust, confidence and clear understanding. If you have any questions at any time about this letter or the work that the firm, or any attorney, is performing, please call me or, if you prefer, John Quinn or Bill Urquhart in our Los Angeles office at (213) 443-3000, to discuss it. You may terminate this representation at any time, with or without cause. Subject to the application of the applicable rules of professional responsibility, we also reserve the right to withdraw if, among other things, you fail to make timely payment of any invoice, you fail to cooperate or follow QEU&S's advice on a material matter, or any fact or circumstance arises that, in QEU&S's view, renders our continuing representation unlawful or unethical. Any termination of our representation of you would be subject to such approval as may be required from any court(s) in which we are appearing on your behalf. In the event of termination by either of us, fees and costs for work performed prior to termination will still be payable to the extent permitted by law.

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Date of Commencement and Termination of the Engagement

The effective date of our agreement to provide services is the date on which we first performed services. The date at the beginning of this letter is for reference only. If this letter is not signed and returned for any reason, you will be obligated to pay us the reasonable value of any services we have performed as well as the costs we have incurred on your behalf.

QEU&S's representation of you will be considered terminated at the earliest of (i) your termination of the representation, (ii) QEU&S's withdrawal from the representation, (iii) the completion of QEU&S's substantive work for you, or (iv) following 60 days of inactivity by QEU&S on the matter.

File Retention and Disposition

After the Engagement has concluded, and subject to payment of all outstanding fees and disbursements, you may request the return of files pertaining to the Engagement. Your files will be released only following delivery to QEU&S of a signed release letter containing appropriate directions and acknowledgment of the obligation to pay outstanding fees. QEU&S may charge you for the reasonable costs of retrieval, assembly, copying and transfer of all files or materials in any format. It is our practice to retain the permanent records of the matter, in accordance with our records retention policy, for a period of not less than 7 years after the Engagement has ended. If you do not request the files in writing before the end of our retention period, upon the expiration of that period we will have no further obligation to retain the files and may, at our discretion, destroy the files without further notice to you.

Other Litigation or Proceedings

If, as a result of this Engagement, and even if the Engagement has ended, we are required to produce documents or appear as witnesses in any governmental or regulatory examination, audit, investigation or other proceeding or any litigation, arbitration, mediation or dispute involving the Client or related persons or entities, Agility shall be responsible for the costs and expenses we reasonably incur (including professional and staff time at our then-standard hourly rates). Similarly, if we are sued or subjected to legal or administrative proceedings as a result of our representation of the Client in this matter (including unmeritorious disqualification proceedings), Agility agrees to indemnify us for any attorney's fees and expenses (including our own professional and staff time at our then-standard hourly rates) we incur as a result. This paragraph is not intended to apply to any claim brought by or on behalf of the Client alleging wrongdoing by QEU&S.

Arbitration

Although we think it is unlikely, it is possible that a dispute may arise between us regarding some aspect of the Engagement and our representation of you. If the dispute cannot be resolved amicably through informal discussions, we believe that most, if not all, disputes can be resolved more expeditiously and with less expense by binding arbitration than in court. This provision will explain under what circumstances such disputes shall be subject to binding arbitration.

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(a) AGREEMENT TO ARBITRATE:

QEU&S and the Client agree that any dispute between them, whether a claim by you against us or by us against you, including, without limitation, claims for unpaid fees and charges, negligence, breach of contract or fiduciary duty, fraud or any other claims relating to any aspect of the Engagement and our representation of you, shall be resolved by confidential, binding arbitration as described in ¶ (b) below.

The Client acknowledges that this agreement to arbitrate results in a waiver of the Client's right to a court or jury trial for any fee dispute and/or malpractice claim. This also means that the Client may be giving up their right to discovery and appeal, to compel witnesses and documents, to seek all available relief (except punitive damages which are provided for under state law), and to have the matter heard in a public forum. If you later refuse to submit to arbitration, you understand that you may be ordered to do so. You acknowledge that, before signing this Engagement Letter and agreeing to binding arbitration, they are entitled to, and have been given, a reasonable opportunity to seek the advice of independent counsel.

(b) ARBITRATION PROCEDURES:
In the event of any dispute that is subject to arbitration pursuant to ¶ (a) above, the initiating party will provide a written demand for arbitration to the other party setting forth the basis of the initiating party's claim and the dollar amount of damages sought.

The parties further agree that, if arbitration is necessary, each arbitration will:

1. Be heard and determined by a panel of three arbitrators with one selected by each party to the arbitration, and the third selected by the first two from the panel of arbitrators of JAMS (or its successor). Once a party selects an arbitrator and notifies the other party (the "non-selecting party") of its selection, the non-selecting party shall select an arbitrator within thirty (30) calendar days. If the non-selecting party fails to select an arbitrator within thirty (30) calendar days, JAMS (or its successor) shall select an arbitrator on the non-selecting party's behalf. Once two arbitrators are selected, those two arbitrators shall select the third arbitrator (from the panel of arbitrators of JAMS, or its successor) within twenty (20) calendar days. If the first two arbitrators fail to select a third arbitrator within twenty (20) calendar days, JAMS (or its successor) shall select an arbitrator (from the panel of arbitrators of JAMS, or its successor) on their behalf.

2. All selected arbitrators shall be retired state or federal judges;

3. Take place in the city in the United States where the QEU&S attorneys who spent the most time on the Engagement are located (the "applicable city");

4. Be conducted in accordance with JAMS Streamlined Arbitration Rules and Procedures (or any successor rules and procedures), in effect at the time the initiating party delivers to the other party the demand for arbitration required hereunder;

5. Require the arbitrators to enforce the terms of this agreement, and they will lack authority to do otherwise;

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6. Apply the laws of the jurisdiction in the United States where the applicable city is located. The arbitration proceedings and the decision of the arbitrator will be confidential. Notwithstanding anything to the contrary contained in this agreement, the prevailing party in any arbitration, action or proceeding to enforce any provision of this agreement (for avoidance of doubt, a party that obtains a net monetary recovery shall be the prevailing party) will be awarded attorneys' fees and costs incurred in that arbitration, action or proceeding even if the law provides otherwise, including, without limitation, the value of the time spent by QEU&S attorneys to prosecute or defend such arbitration, action or proceeding (calculated at the hourly rate(s) then normally charged by QEU&S to clients which it represents on an hourly basis), except that the foregoing shall not apply to any mediation, as described above, and the parties will split the fees of the arbitrator; and

7. Be final and binding on both parties, will not be subject to de novo review, and that no appeal may be taken. The ruling of the arbitrator(s) may be entered and enforced as a judgment by a court of competent jurisdiction. The arbitration provisions of this Agreement may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses.

Binding Agreement

By signing below, the Client agrees that the Client has had enough time to review this letter, that we have advised you that the Client has the right to consult another, independent lawyer about the provisions relating to the waiver of conflicts of interest and any other aspect of this letter as to which the Client may wish to avail themselves of such advice, and that the Client is satisfied that you understand this letter. The Client also agrees that it have the freedom to select and engage the counsel of their own choice and accordingly that this is an arm's length agreement between parties of equal bargaining strength and that the Client has freely determined, without any duress, to sign and agree to these terms.

Severability

Should any part of this Agreement, or language within any provision of this Agreement, be rendered or declared invalid by a court of competent jurisdiction such invalidation of such part or portion of this Agreement, or any language within a provision of this Agreement, should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

Amendments and Additional Engagements

The provisions of this letter may only be amended in writing, signed by all parties.

If the Client later ask us to take on additional assignments, we will send you a supplementary engagement letter reflecting each additional assignment.

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If the foregoing accurately reflects our agreement, please confirm that by signing and returning this letter to me. Please do not hesitate to call me to discuss any questions you may have regarding this agreement.

Thank you again for this opportunity to be of service. We look forward to working with you on this Engagement.

Very truly yours,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Kristin N. Tahler

Kristin N. Tahler

I have read the above Engagement Letter and understand and agree to its contents. The parties to this Engagement hereby agree that a faxed, pdf or electronic signature shall count as the original.

Bader El-Jeaan

By: _____

Name: _____

Title: _____

Date: 8/1/2019

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PRIVILEGED & CONFIDENTIAL, ATTORNEY-CLIENT COMMUNICATION

GUIDELINES ON PRESERVATION AND PRODUCTION OF ELECTRONICALLY STORED INFORMATION

INTRODUCTION

Some preliminary background information may assist you in understanding the legal duties now applicable to the preservation and production of electronically stored information. Advancements in information technology have fundamentally changed how we communicate with one another and how companies do business. These changes have resulted in the development of new rules governing discovery in litigation. These new rules are an attempt by our courts to adapt to the changes in today's business world and society which these technological innovations have produced.

These new rules relate to "electronic discovery" and are referred to as "e-discovery rules." Because electronically stored information ("**ESI**") is particularly vulnerable to accidental deletion, modification or corruption, courts have imposed new duties on both parties and their attorneys to preserve ESI. The new e-discovery rules were enacted to address problems unique to electronic discovery. As used in these guidelines, ESI refers to any type of electronic data or information in any type of format. So long as electronic data is in a fixed tangible form and is capable of being electronically stored, even temporarily, the e-discovery rules apply.

All parties are required to follow these e-discovery rules regardless of how simple or sophisticated their computer system. In other words, it does not matter whether a party is an individual, partnership, joint venture, sole proprietorship or mega-corporation. Nor does it matter whether a party has a single laptop computer or a massive computer network. If a party has any device that generates or stores ESI, whether it be a bank of servers or a single "thumb" drive, a Blackberry, cell phone or any other type of electronic storage device, the e-discovery rules apply.

The duty to preserve potentially relevant ESI is triggered whenever litigation is "reasonably anticipated." The process by which a party identifies and preserves potentially relevant information or evidence including ESI is generally referred to as a "**litigation hold**," and that is how we will refer to the process in these guidelines. The imposition of a litigation hold, among other things, requires the suspension of any document retention/destruction policies or any automated features of a party's computer or email systems that could result in the loss, destruction or deletion of ESI or paper records. For example, if a party recycles its back-up tapes or if its email system automatically deletes emails after a specified time frame, those processes have to be stopped, at least until the party can develop an appropriate strategy for preserving potentially responsive ESI. Otherwise sanctions can be imposed if relevant ESI is lost or destroyed.

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The new e-discovery rules mandate a heightened level of cooperation between clients and their counsel in locating and preserving potentially relevant ESI. The new duties which these rules impose on both clients and their counsel profoundly affect the relationship between them. Additionally, the e-discovery rules can dramatically increase the cost of discovery and materially affect how litigation is conducted. Before explaining how electronic discovery works under these rules, it is important to understand how the responsibility for e-discovery compliance has been allocated between clients and their counsel.

RESPECTIVE DUTIES OF CLIENTS AND THEIR COUNSEL RELATIVE TO E-DISCOVERY

In *Zubulake v Warburg LLC*, 229 F.R.D. 422, 431 (S.D.N.Y. 2004) (*Zubulake V*), a case generally followed throughout the country, the court held that in order to avoid the imposition of discovery sanctions, a party "must suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure the preservation of relevant documents." The court explained that "a party and its counsel must make certain that all sources of potentially relevant information are identified and placed 'on hold.'" 229 F.R.D. at 432. To accomplish this the court explained counsel should:

- Become fully familiar with the client's document retention policies, and data-retention architecture including system-wide backup procedures, recognizing that this will invariably involve speaking with the client's IT personnel; and

- Communicate with "key players" in the litigation to understand how they store information.

The court in *Zubulake* observed that a party's e-discovery obligations do not end with the implementation of a litigation hold. It noted that a party has an ongoing duty to preserve relevant information while the lawsuit remains pending. The court explained that it was not sufficient for counsel to simply notify the client about the need to impose a litigation hold and assume the client will preserve and produce relevant information. Rather, the court concluded that counsel should oversee compliance with the litigation hold and outlined three steps that counsel should take to confirm that the client is complying with its preservation obligation:

> *First,* counsel must issue a litigation hold at the outset of litigation or whenever litigation is reasonably anticipated. The litigation hold should be periodically re-issued so that new employees are aware ot it, and so it is fresh in the minds of all employees.
>
> *Second,* counsel should communicate directly with the 'key players' in the litigation so that the preservation duty is clearly communicated to them. As with the

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litigation hold, the key players should be periodically reminded that the preservation duty is still in place.

Finally, counsel should instruct all employees to produce electronic copies of their relevant active files, and make sure that all backup media which the party is required to retain has been identified and properly preserved.

Zubulake V, 229 F.R.D. at 433-34.

These action steps must be taken at the outset of any lawsuit, and then periodically repeated throughout the litigation. Moreover, attorneys have a continuing obligation to monitor a client's efforts to preserve and produce ESI. It is essential that a client fully cooperate in the process, understanding that these obligations are imposed on all parties as a matter of law, and not by the whim of counsel. Sanctions for noncompliance with these e-discovery obligations can be imposed on both client and counsel alike. Should such a motion ever be filed, it could trigger a number of additional issues that we would need to discuss with you.

Please also be aware that in some cases, e-discovery may generate a significant increase in the cost of defending a lawsuit and in the diversion of personnel and resources needed to address a party's e-discovery obligations. The expense involved in locating, reviewing and producing ESI in some cases may be so significant as to warrant serious consideration of an early resolution of the claim. In other cases, e-discovery costs may have little or no impact on litigation or settlement strategies and merely represent expenses that are now incurred at the beginning of the case, rather than at a later point in time.

WRITTEN GUIDELINES FOR COMPLIANCE WITH THE RULES GOVERNING ESI

The written guidelines set out below are not intended to serve as a mechanical checklist applied in an identical manner in all cases. The process of identifying, preserving and producing ESI can be a highly complex undertaking. There is no "one size fits all" set of rules when it comes to e-discovery. Rather, the principles discussed below should guide you in implementing a process to preserve and produce ESI, tailored to the complexities of a given matter.

1. *When the Duty to Preserve Evidence is Triggered*

Various statutes and regulations require the preservation of specific types of information in a variety of contexts. However, in the absence of such a statute or regulation, for litigation purposes the duty to preserve is triggered at that point in time when litigation, a governmental investigation, or any adversarial proceeding or process is "reasonably anticipated." When litigation is "reasonably anticipated" requires a reasoned, good-faith analysis of all relevant facts and circumstances.

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When a duty to preserve is triggered, the parties should immediately begin the process of attempting to locate and preserve any potentially relevant ESI, regardless of its source or location (*e.g.*, desktop or laptop computer, network server, thumb drive, backup tapes, digital audio recording, voice mail etc.). The duty to preserve continues through the pendency of the proceeding, and includes any relevant evidence that is created *during* the course of the proceedings.

If you have not already done so, please institute a "litigation hold" on any potentially relevant ESI or other information in accordance with these guidelines.

2. *Identify Key Personnel*

"Key Personnel" should be immediately identified for several reasons; first so that they can be notified in writing about their duty to preserve evidence, and second, so that any potentially relevant ESI in their possession, custody or control can be located and preserved. Key Personnel are those individuals who were involved in any aspect of the matter at hand, as well as those individuals who either have or claim to have some knowledge of the matter or any defenses that relate to it, or to the claimed injury or resulting damages, and/or who have in their possession or under their control ESI or any other form of potentially relevant evidence.

The effort to identify the Key Personnel and locate potentially relevant information in their possession should focus on the assertions made and any potential defenses to those assertions. It will also be helpful to identify any other employees or third parties with whom Key Personnel had contact involving the relevant issues so that emails, letters and other communications to and from those individuals or physical evidence in their possession, custody or control can be located and preserved.

Please prepare a list of all Key Personnel for when we meet in the near future. Please include the work or home addresses, email addresses and phone numbers (for those individuals no longer in your employ), so that we can follow up with them to verify that they have been notified about the need to preserve ESI, understand the ramifications if they fail to do so and to learn how they store information.

You should expect that at an early stage of this matter our opponent will request a deposition or ask to interview the person(s) most knowledgeable about your computer, email, and record keeping systems. Please identify who that person is or who those persons are, and provide their contact information at our initial meeting. We may ask that one of them attend our initial Rule 26 scheduling conference with opposing counsel if available. **Additionally, please designate someone who could serve as your e-discovery liaison or as our contact person should questions arise about your computer, email or record keeping systems.**

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3. *Content and Scope of Litigation Hold Notice*

You should notify Key Personnel in writing about their duty to preserve any evidence, be it paper records or ESI, which is potentially relevant to this matter or any defenses that could be asserted. The written hold notice should broadly describe the nature of the claims being asserted and any defenses to the claims so that your Key Personnel do not inadvertently delete or destroy any potentially relevant ESI or paper records. Your written hold notice should also explain the potential types of ESI that should be preserved and where potential sources of that ESI may be found. We have included a list of possible sources in guideline 6 below. The written hold notice should also explain that sanctions could be imposed in this matter if they fail to preserve relevant information and that the sanctions could range anywhere from the imposition of a large fine to the entry of [a default judgment/the dismissal of the claim].

The written hold notice should be broadly disseminated. The notice should be sent to Key Personnel, to the IT, Information Management and/or Risk Management departments (where applicable), to the persons in charge of departments such as Human Resources, Product Development, Marketing, or any other department where potentially relevant ESI may be located, and to any department heads in which Key Personnel are employed. In addition to the litigation hold notice, those department heads should be provided a list of Key Personnel in their respective departments who you believe may be in possession of potentially relevant ESI. Department heads should be instructed that if they are aware of any other person who may have possession of potentially relevant ESI, they should immediately notify that employee of the litigation hold and also notify a designated member of your legal department who should promptly send a copy of the hold notice to that employee.

Consider designating a member of your legal department to answer any questions which anyone may have about the litigation hold process. You also should consider including a statement in the litigation hold notice explaining that should anyone have a question about the litigation hold process or the obligation to preserve ESI, that they should immediately contact the designated member of your legal department.

The litigation hold notice should periodically be resent to the original Key Personnel and any new employees who have access to potentially relevant ESI which is subject to your litigation hold so they do not inadvertently delete or destroy it. As a lawsuit matures, the litigation hold may need to be modified as issues are added or evolve. Additional employees may need to be notified about the hold when new claims or issues are added or when our opponent's liability theory changes. We will discuss these points with you at our initial meeting.

A party's litigation hold process has been held to be deficient when senior management was not involved in the process. Accordingly, we recommend that the

written hold notice be issued either by a member of senior management or by a senior member of your legal department.

Please notify all Key Personnel that we will be contacting them to discuss the topics noted above, and please alert the head of your IT department that we will need to speak with IT staff to learn about your email and information systems, data-retention architecture and document retention practices.

4. *The Duty to Preserve Includes ESI on Home or Personal Computers or PDAs*

Your written hold notice should advise Key Personnel and others who receive the notice that any potentially relevant ESI created or stored on home or personal computers, PDA's or at locations other than your office(s) or business (locations) must also be preserved, regardless of whether that ESI was transmitted to you, or is now in your possession or is available elsewhere. The existence of potentially relevant ESI on home or external computers or PDA's can raise sensitive privacy issues. The law nevertheless requires that relevant information on home computers or storage devices be preserved and treated in exactly the same way as the ESI located on your business systems.

5. *The Duty to Preserve Includes ESI in the Possession of Third Parties Under Your Control*

The obligation to preserve potentially relevant evidence extends beyond the ESI in your immediate possession. The duty to preserve potentially relevant ESI extends to any third party who is subject to your direction and under your control. For example, if you have outsourced any accounting, computer or business functions to a third-party vendor ("Application Service Provider"), or have transferred any archived data to a third-party storage facility, you must instruct that third party to preserve any potentially relevant ESI in its possession. Accordingly, you should immediately notify any such third party about the obligation to preserve any of your ESI in its possession. **Please provide us with the current contact information for any third parties who may be in possession of potentially relevant evidence**, including ESI, so that we may follow up and request that they take steps similar to those described in these guidelines.

6. *Potential Sources of ESI*

The following list is intended to provide examples of the types, sources and formats of ESI that should be located and preserved, where applicable, pursuant to the litigation hold issued in connection with this matter. Because we have not yet spoken with your IT department, we recognize the foregoing list could be over or under inclusive. Thus, you may want to consult with your IT department to tailor the information provided in this guideline. However, you should consider including the type of information outlined below in your written hold notice so that your Key Personnel and others who were sent that notice do not overlook a source or type of potentially relevant ESI:

Digital Communications (*e.g.*, e-mail, voicemail, instant messaging (if logged));

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Electronic Mail Logging and Routing Data;

Word Processing Documents (*e.g.*, Word or WordPerfect documents and drafts);

Spreadsheets and Tables (*e.g.*, Excel or Lotus 123 worksheets);

Accounting Application Data (***e.g.***, QuickBooks, Money, Peachtree data files);

Image and Facsimile Files (*e.g.* PDF, TIFF, .JPG, GIF, DICOM images);

Sound Recordings (*e.g.*, .WAV and .MP3 files);

Video and Animation (*e.g.*, .AVI and .MOV files);

Databases (*e.g.*, Access, Oracle, SQL Server data, SAP);

Personal Data Assistants (PDAs) (*e.g.*, Blackberry, PalmPilot, HP Jornada);

Contact and Relationship Management Data (*e.g.*, Outlook, ACT);

Calendar and Diary Application Data (*e.g.*, Microsoft Outlook PST, Lotus Notes, third-party internet calendars through mail accounts - Yahoo and Hotmail);

Online Access Data (*e.g.*, Temporary Internet Cache Files);

Presentations (*e.g.*, PowerPoint, Corel Presentations);

Network Access and Server Activity Logs;

Project Management Application Data and related documents;

Computer Aided Design/Drawing Files; and,

Backup and Archival Files (*e.g.*, Zip, GHO).

In addition to preserving the electronic data or files themselves, as explained below you must also preserve all archived data or backup media which may contain potentially relevant ESI until otherwise directed by counsel. This includes magnetic and optical media, hard drives, floppy disks, backup tapes, Jaz cartridges, CD-ROMs and DVDs. Any software necessary to review the data contained on these media also must be preserved. If any backups are made in realtime via the web (*e.g.*, LineVault, e-Vault), they must be preserved and the third party handling this data must be contacted to assist in its retention.

In order to prevent data loss due to normal replacement of outdated computers, systems, hardware or software, you should also preserve all computers, hardware and software no longer in use that were used during the relevant timeframe until it has been

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verified that no potentially relevant ESI is stored on those computers or systems. This includes any servers, desktops, laptops, hard drives, and all associated hardware and software applications.

Some systems have the capability to capture or log instant messages (IM), if that feature has been activated. Does your system have the capability to log IM and, if so, has that feature been activated? Do you have any policy concerning the use of IM for business purposes? If so, please provide us with a copy of that policy at our initial meeting.

If your IT staff has developed a data map covering any aspect of your computer, email or record keeping systems, sometimes referred to as a "topology," please have a copy available at our initial meeting because it will hopefully reduce the amount of time we need to spend with your IT staff learning about those systems.

7. *Preservation Obligations*

The law governing the preservation of ESI also applies to other forms of evidence, including your paper records. No potentially relevant evidence should be altered or destroyed. Rather, it should be maintained in the way it is kept in the ordinary course of business. All copies, including all duplicates should be preserved. Even if paper copies have been made of electronic files, you should preserve the original electronic files.

The potential for accidental deletion, destruction or corruption of ESI makes it essential that prompt steps be taken to preserve relevant information. Delay in doing so increases the possibility that relevant ESI may lost, thereby exposing you to sanctions. Thus, it is important to quickly act to preserve ESI. The obligation to preserve does not require imaging all computers and email, or freezing all electronic documents and data. Absent extraordinary circumstances, the preservation obligation need only involve steps reasonably necessary to secure potentially relevant evidence necessary for a just and fair resolution of the issues presented.

In some instances, however, it may be prudent to make a forensically sound mirror image of certain computer hard drives to avoid the accidental deletion of ESI due to everyday computer usage. In matters where an employee is believed to have electronically misappropriated company information or property; where particularly critical evidence is recognized to exist on a specific hard drive; where potentially relevant information has been recently deleted and may need to be reconstructed; or where the way in which a computer was used appears to be a potential issue in the case, imaging the computer(s) involved should be considered. In such cases, a bit-by-bit copy of the hard drive should promptly be made. Consider whether to employ a qualified *outside expert,* rather than using your internal IT personnel to complete that work. The use of an outside forensic computer expert will help to insulate you from any adverse consequences resulting from the errant handling of the evidence and will limit the need for your IT personnel to become potential witnesses in the litigation.

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To prevent the inadvertent destruction of potentially relevant ESI, you are obligated to:

(1) discontinue the destruction of potentially relevant information pursuant to any document retention/destruction policy and/or any automated features of your systems that delete or overwrite information;

(2) temporarily stop the recycling of all backup tapes until otherwise directed by counsel;

(3) preserve any storage devices containing potentially relevant information until the information has been preserved or if necessary, until a forensically sound replica (bit by bit mirror image) is made;

(4) temporarily refrain from installing new software that might overwrite potentially relevant data;

(5) maintain properly working virus protection software to protect the data from loss;

(6) preserve any website content and links;

(7) preserve all login ID's, names and passwords, decryption procedures (and accompanying software), network access codes, manuals, tutorials, written instructions, decompression software;

(8) maintain all other information and tools needed to access, review or reconstruct potentially relevant electronic data;

(9) preserve (do not recycle or dispose of) any computers that may have been used during the relevant timeframe;

(10) preserve (do not reuse) computers of key employees who leave or have left your business until the all relevant information has been preserved; and

(11) suspend all maintenance procedures that could result in the deletion of ESI, including disk defragmenting, on computers that may contain relevant information until any relevant ESI stored on those computers has been preserved or until a forensically sound copy of the hard drive has been made, if necessary.

If you have any document retention or document destruction policy, please provide us with a copy of that policy at our initial meeting. If there is a person who is responsible for auditing and/or enforcing that policy, please provide us with that person's contact information at our meeting. We also need to learn if there are any automated features of your computer, email or record keeping systems automatically or routinely delete ESI. If

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so, we will need to confirm that those features have been suspended and learn when they were deactivated.

8. *Document Each Step Taken to Preserve ESI*

To defend against claims that you failed to properly preserve ESI, it is extremely important that a record be kept of every step taken by you to implement the litigation hold and to preserve ESI. Document the names of all employees and department heads to whom the litigation hold notice was sent and record when they were notified. Keep copies of the written hold notice and consider sending two copies of the hold notice to your employees with an instruction that they keep one, and sign and return the other as evidence that they received, read and understood its content. Maintain a log of any verbal instructions given, including when the instructions were given, the persons who provided and received the instructions and a summary of the instructions.

Frequently one party will attempt to discredit the other's effort to preserve ESI in the hope of gaining a tactical advantage through the imposition of sanctions. A comprehensive record documenting all efforts that are taken is necessary so that if challenged in court, your efforts at preserving evidence can be properly defended.

9. *"Metadata," Embedded Data and Data Created or Stored in Unique or Proprietary Formats*

Every document, report or email created on a computer contains hidden electronic information called "metadata." Metadata is literally defined as "data about data." Metadata is automatically created by your computer and functions like a library catalog card for the computer. Among other things, the metadata will reveal: who created a document, when it was created, who last had access to the document, whether it has been revised and by whom, when that revision was made and the number of versions of a document.

Metadata may contain potentially relevant information that can be used to authenticate an electronic document or email and may be sought in discovery. Metadata should be considered part of the original electronic document and should be preserved. One difficulty in preserving metadata is that by simply opening a document and moving it to a folder to preserve it for discovery purposes will alter several metadata fields including when the document was last accessed and who accessed it.

Besides metadata, there is another form of potentially hidden information that can exist in the electronic version of a document which is manually embedded into a document's content itself through the track changes feature of a word processing program. That embedded data may contain information subject to attorney-client privilege or work product protection.

We need to learn if any of your ESI is created or stored in a unique or proprietary format since that may impact the form of its production. We also need to learn if any

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aspect of your ESI is electronically searchable as it is ordinarily maintained since that may also impact the format of its production. Are there any unusual aspects of your computer, email or record keeping systems that could make production of ESI difficult or problematic?

The reason we are raising these questions is that the e-discovery rules provide you some choice as to format in which ESI will be produced. ESI can be electronically produced in either its "native state" or in an imaged format. The term "native" when used in an e-discovery context simply refers to the program or file format in which the document or data was originally created. In other words, if a document was created in WordPerfect, producing it in its native state would require production of it in a WordPerfect format. A commonly used image format is Adobe's Portable Document Format or PDF.

There are advantages and disadvantages to each form of electronic production. Producing ESI in its "native state" would include production of any associated metadata or accompanying embedded data. Additionally, documents produced in their native state can be altered. Native documents cannot be Bates stamped or redacted without altering the original. To view an electronic document in its native state which is created or stored in a unique or proprietary format requires that the party receiving it have access to the same software used to create or store the document. On the other hand, documents produced in an imaged format cannot be altered and will not include any metadata unless metadata fields are loaded into the image. Imaged documents can be redacted and bates stamped, but are more costly and take longer to produce.

You should carefully review all of these subjects with your IT department. Your preferred format of ESI production is an issue which we need to discuss with you at this stage because it is a subject which the court's rules require us to address with opposing counsel at the initial scheduling conference.

10. *Accessibility of Electronic Data*

The federal rules set up a two-tiered system of ESI discovery. Parties are expected to produce ESI that is readily accessible. However, there is no obligation to produce ESI from sources that are not reasonably accessible because of "undue burden or cost." The following are recognized categories of ESI which generally describe the ways data may be stored relative to its potential accessibility:

Active data - computer data which is immediately and easily accessible;

Backup data – computer data residing on readily available storage media;

Archived data – computer data placed into long term storage on backup tapes or other forms of media that may be periodically recycled or reused.

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Legacy data – computer data created on old, out of date, obsolete or no longer used computer systems and/or hardware or software; and

Deleted data – computer data that has been "deleted" from a computer's hard drive but is potentially recoverable through computer forensic techniques;

We need to learn if you have any legacy data or legacy system(s), and, if so, whether there is any data which has not been transferred to the system(s) currently in use, and how far back the legacy data which has not been transferred to your current system goes, as well as whether any of that data might be relevant to the issues in this matter. In that event, we would need to determine what steps would be required, and at what expense, to access, review and produce that legacy data.

In addition, we will need to learn how ESI is stored by its custodians. If your systems are backed up or archived, we need to learn what data is backed up and/or archived, how that is accomplished, how frequently the process occurs, how long the ESI is retained, where the backup tapes or archived media is stored and any rotation cycle. To determine the accessibility of ESI from those sources, we should learn what steps would have to be taken, and at what cost, to restore, search for and produce specific data or information on those tapes. We also need to learn if those backup tapes or archived data is used for any reason other than disaster recovery.

We bear the burden of proving that it would be unduly burdensome or costly to produce ESI from these or any other sources or potential repositories of ESI. Thus, we will need to speak with your IT department to discuss any features of your system(s) or the information stored in various sources that would make production of ESI from those sources unduly burdensome or costly. Your IT department will be of invaluable assistance in evaluating whether we can claim that ESI from any of those sources is inaccessible within the meaning of the e-discovery rules and thereby possibly avoiding the expense of producing ESI from those sources. However, you still need to preserve potentially relevant ESI from those sources until the issue of ESI production from those sources has been resolved by agreement with opposing counsel or an order from the court.

11. *Processing and Production of ESI*

You need to anticipate that you may have to segregate and process for review and production an unknown quantity of electronic data. One way to limit the cost of e-discovery is to use filtering techniques to reduce the size of the data set that may need to be reviewed for privilege and/or produced in discovery. Common filtering techniques include "de-duplication" of identical documents or emails through the use of "hash methodologies," key-word or concept searches, and screening data by date ranges, custodians and/or file types.

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These are issues we need to discuss at our initial meeting. You should assess whether your IT staff has the time and/or capacity to collect and process ESI for production in discovery in this matter. More importantly, you need to assess whether your IT staff should perform these types of tasks given the range of sanctions that could be imposed if ESI is lost in the process. Having your IT staff perform these tasks could require that they be deposed and opens their work up to review and potential criticism by our opponent and the court. It also diverts their attention from company business. While we have our own experienced IT staff who could provide technical or other assistance, there is a risk that if we assist in or actually perform these tasks, our staff could potentially become witnesses if a motion for sanctions were later filed, and in an extreme case, we could be disqualified from representing you. **Accordingly, unless it would be cost prohibitive or there are other good reasons not to do so in a given matter, we generally recommend that a qualified outside vendor be considered for managing the recovery and processing of ESI necessary for its production.** Please let us know if you have used any e-discovery vendors in the past and, if so, whether you were satisfied with their work and would be willing to use them again.

OTHER E-DISCOVERY RELATED ISSUES

In addition to the issues noted above, at our initial meeting there are several other points that we need to discuss with you. They include:

- When the litigation hold was issued or the process began;
- What steps have been taken to implement a litigation hold;
- What documentation do you have concerning the steps taken to implement the litigation hold;
- The name and contact information of the person in charge of the hold process or any member of your legal department designated to answer questions;
- What types of ESI are in your possession, what formats is it stored in, and where are the data repositories or sources for that ESI located;
- How much ESI and how many custodians are involved.

Finally please let us know when the appropriate persons from your IT department are available to meet with us. We do not want to delay our initial meeting with you to cover these various issues, so our meeting with IT does not have to occur the same day. Depending upon the complexity of your systems, the meeting with your IT staff could run much longer than our meeting to discuss the issues raised above.

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SUMMARY

The duty to preserve and produce ESI has become central to the litigation process. The tasks required to comply with our respective obligations must be performed at the very beginning of a lawsuit, and again periodically throughout the course of the litigation. At our initial meeting, we will discuss with you the strategic implications of these ESI obligations and how our respective obligations will be met in connection with this matter. At that meeting, we will review with you any steps that have already been taken to preserve ESI and work with you to develop a clear plan to properly preserve and produce any potentially relevant ESI on a going-forward basis.

In some cases, e-discovery costs may have little or no impact on litigation or settlement strategies. In other cases, e-discovery may generate significant costs and require the diversion of personnel and resources needed to address a party's e-discovery obligations. The expense involved in locating, reviewing and producing ESI in some cases may warrant serious consideration of an early resolution of the claim. We will be glad to discuss these and any other issues or questions you may have at our initial meeting in the near future. Of course, should you have any questions about what steps should be taken to preserve ESI prior to our initial meeting, please immediately contact us at your earliest convenience.

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